

REMARKS

Claims 1-21 are pending. The specification has been amended in order to correct a typographical error and correct the priority to US Provisional Application No. 60/207,777. Claim 1 has been amended in order to more clearly define the invention. No new matter has been added.

Rejection under 35 USC 112

The Official Action rejected claim 1 under 35 U.S.C. 112. As amended, the limitation “said mixture” has antecedent basis and the phrase “below about” has been amended to “below”.

Double Patenting rejection

The Office action rejected claims 1-21 under the obviousness-type double patenting doctrine as being unpatentable over claims 1-18 of US Patent No. 6,170,050 (USSN 09/863,986). Claims 1-21 have been provisionally rejected as unpatentable over co-pending US Application No. 09/450,609. The Office Action states that although “the claims are not identical, they are not patentably distinct because the composition of the ‘609 application comprises the instant compound and has a “low water content” which renders the instant claims obvious”.

Rejection over US Patent No. 6,170,050

Applicants herewith submit a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,170,050.

Provisional rejection over US Application No. 09/450,609.

Applicants maintain that the Office Action has not established a *prima facie* case of obviousness. First, to set forth a *prima facie* case of obviousness the Official Action must show that there is some suggestion or motivation in the prior art to modify the prior art in the direction of the claimed invention. *See* M.P.E.P. §2143.01. Applicants

respectfully point out that claims presently in the application are directed to specific water content. Thus, to arrive at the "claimed invention," the Office Action would have to select compositions containing a water content of below 1% from the many low water content that may be used. What is the motivation or suggestion to make such selections of specific water content? Nothing in the cited reference suggests specifically using water content of below 1%. On the basis of the foregoing, Applicants respectfully assert that claims 1-21 are not *prima facie* obvious over the cited reference.

In view of the foregoing remarks, Applicants submits that the pending claims particularly define the invention, and request that the rejection be withdrawn and that this case is passed to issuance. Should the Office believe that further issues remain to be resolved it is requested that she telephone the undersigned in order to provide the Applicants with an opportunity to resolve such issues. . The Commissioner is hereby authorized to charge any fee which may be required, or credit any overpayment, to Deposit Account No. 50-3221.

Respectfully submitted,



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